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IMPACT OF COVID-19 MEASURES IN ITALY

Report of the Legal Team Italia (LTI)

1) GENERAL INTRODUCTION

The measures adopted in Italy to deal with the COVID-19 pandemic emergency began on 31 December 2020, with the declaration by the Council of Ministers of the state of health emergency, for a period of six months. This declaration allows the issuing of Civil protection ordinances, which may also involve derogations from current legislation with the only limit being compliance with the general principles of the European Union's legislation and standards.

After the first imposition of quarantine obligations on travellers coming from what were at the time considered the areas at risk (mainly China), the first significant measure was the Decree Law no. 6 of 23 February 2020, which provided for the possibility of imposing mandatory quarantine measures in certain areas of the country, where at least one positive subject was found to be present, and the establishment of red zones in certain municipalities, with a ban on entering and leaving the municipality and the suspension of all non-essential activities.

On the same day, a Decree of the President of the Council of Ministers (DPCM) identified the municipalities in which to establish the “red zones” (in Lombardy and Veneto) and specified the prohibitions and suspensions of certain activities. This was essentially the first act of a real distortion in the hierarchy of legal norms and the division of powers that allowed the Government, without a real verification by Parliament, to impose limitations on the exercise of fundamental rights in the name of the health emergency.

Thus, after the issuance of other Prime Ministerial Decree that established new red zones, with Prime Ministerial Decree of 8 March 2020, the Council of Ministers extended the ban on travel from home not motivated by proven work needs, situations of need or health reasons to the entire Lombardy region and various provinces in northern Italy; with DPCM of 9 March (decree known as “#iorestoacasa” - “I stay at home”), the day after, the bans were extended to the entire national territory, also prohibiting any form of assembly in public places or open to the public, and thus starting the lockdown. Subsequent DPCMs would suspend various commercial and productive activities and further restrict the possibility of moving outside one's home.

The limitations have, as said, generally been adopted by means of Prime Ministerial Decree or by order of the Minister of Health. By decree law (or D.L. which is an act of the Government that has



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the same force as the law approved by Parliament and comes into force immediately but must be approved within sixty days by Parliament) the first relevant is Decree Law 18 of 17 March, were introduced measures to strengthen health services, use of redundancy funds (lay-off) for workers temporarily unable to carry out their activities, suspension of payment terms and the terms of administrative procedures and other measures.

These measures have been progressively relaxed since 4 May.

2) SUSPENSION OF THE EXERCISE OF FUNDAMENTAL RIGHTS

The “exceptional pandemic period” allowed the exercise of fundamental rights, such as freedom of movement and freedom of assembly, to be suspended outside the constitutional framework (such measures were in fact generally introduced by an act of the Government, the Prime Ministerial Decree or even the Ministerial Ordinance, where the Constitution would require the use of the law.

With regard to freedom of movement, increasingly restrictive rules have been introduced, often difficult to interpret within their concrete limits. This determined that in various cases the Police Forces were substantially free to interpret the limits in a more or less restrictive way and what it was lawful to do, by discretionarily sanctioning situations not worthy of sanction. As far as sanctions are concerned, after an initial phase in which the criminal instrument was used (the crime of violation of the Authority's order, punished with a light imprisonment penalty or with a pecuniary sanction of a criminal nature), we then moved on to the use of the administrative sanction (a fine from 400 to 3000 euro) even the conduct previously treated as criminal offences were then transformed into administrative offences.

A very strict ban on assembly, which resulted in the substantial suspension of the right of assembly, was imposed.

The prohibition of "dynamic" demonstrations is still in force; the principals are allowed as long as the rules of distancing are respected. Following the recent demonstrations held to protest the murder of George Floyd by police officers and against racism, the Police Authorities have already announced that they will issue a large number of administrative sanctions for those who have participated in the sit-in by not respecting the rules of distancing or have taken part in marches that have moved spontaneously.



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3) IMPACT ON JUDICIAL ACTIVITY AND THE LEGAL PROFESSION

First of all, it has been provided for the suspension of the procedural deadlines, except only for urgent acts such as hearings validating arrests, from 9 March to 11 May of 2020.

In addition, the possibility of access to the Courts has been extremely limited, with the result that a large part of the Judicial Offices' activity has in fact been blocked. The same possibility of filing documents using telematic means or holding hearings at a distance by videoconference was initially regulated by local protocols of the Presidents of the various Judicial Offices, with the consequence that the situation is often very different from Court to Court.

Initially with the local protocols, then with Decree Law 18 of 17 March, it was provided that the hearings could or should be held with the videoconferencing system, with the presence of the lawyer and his client in a different location than the court. In criminal hearings with arrested persons, the detainee is connected by videoconferencing. Obviously, this system (initially scheduled to last until April 15, then extended with amendments to June 30) alters the normal course of the hearings, especially in the criminal field, by distorting the normal procedural dialectics and in fact preventing the full exercise of the right of defence (from the difficulties in the confidential conversation with the client, to the impossibility of freely proceeding with the examination of the witness).

The forced suspension of judicial activity has obviously in many cases caused significant economical difficulties even for lawyers. It has been provided for all professionals, the possibility of obtaining an aid of 600 euros for 2 months completely insufficient compared to the large reduction in income in the first months of the year.

4) COVID-19 EPIDEMIC IN PRISONS

Since the first anti-Covid measures, when it was clear that there was a real health emergency, human rights associations and lawyers' associations (including LTI) have called for serious measures to empty prisons, especially of people affected by chronic overcrowding. At the end of February there were over 61,000 prisoners, with an official capacity of about 51,000 and an effective capacity of about 47,000. Many called for an amnesty to be decided immediately, as the only appropriate measure to allow many people to leave prison as soon as possible and to prevent the pandemic from developing in prisons.

Unfortunately, this request has not attended, and the first measure taken was the suspension of visits by lawyers and by family members of prisoners.



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The fear that the epidemic could spread in prisons, combined with the attempt to isolate prisons from the outside world, caused an immediate state of agitation in many prisons, which resulted between 7 and 9 March in violent riots in about a quarter of Italian prisons, that were severely repressed. During the riots 13 prisoners died, officially due to an overdose caused by taking stolen drugs, while after the riots many prisoners complained that they've been beaten and humiliated.

Later, the possibility of telephone conversations with the lawyers and family members was extended, including the use of videoconferencing. Only since May 18, prison interviews have restarted personally.

The Decree Law 18 provided for a simplification of the procedure for granting home detention for those convicted with residual sentences of no more than 18 months, while introducing strict limitations in relation to the crime for which there had been a conviction, excluding also those who received disciplinary sanctions or participated in the riots of the first days of March, and imposing the use of electronic bracelets for those with residual sentences of more than 6 months. Two Law Decrees at the end of May made the procedure for obtaining home detention longer and more difficult, following the disputes caused by the hypothetical release of some mafia bosses.

Despite this very limited regulatory intervention, the judiciary power adopted a realistic attitude even in a non-uniform manner on the territory; this allowed a certain number of prisoners to be granted temporary home detention for health reasons, in view of their age and health conditions on the one hand and the risk of contracting the virus on the other, and reduced new entries to prison. This is as a result of both the greater propensity to take preventive measures other than prison and the undeniable reduction in "street crime" during lockdown. At the end of May, the prison population was almost 53,000 prisoners; certainly less than the 61,000 at the end of February, but still far above the actual capacity of the system (about 47,000).

In the month of May and even more so the month of June we can see a normalization of the numbers, with the consequence that in the absence of a real structural reform of system we will soon return to the numbers before the pandemic.

5) EPIDEMIC AND MIGRANTS

Since the beginning of the emergency, human rights associations, including LTI, have called for the closure of the CPR (detention centres for migrants) and Hot Spots to prevent the spread of the pandemic and in view of the fact that expulsions and deportations would have been impossible for a long time anyway.



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From a governmental point of view, this request was not heard; on the contrary, since the first circulars, it was decided to suspend the normal activities of the immigration offices of the police also responsible for issuing residence permits, but it was specified that they should continue their activities related to expulsions.

In fact, since the first days of April there has been a significant decrease in new entries to the CPR, while the period of stay of detainees has increased due to the impossibility to proceed with deportations.

As far as landings are concerned, ships have been used to quarantine migrants rescued from shipwrecks before they could reach Italy.

The COVID-19 emergency and the consequent need to allow full access to health care led the government to launch a regularization procedure for irregular migrants at the end of May. This procedure provides, however, that the possibility of regularization depends on the employers: in fact only the employer can send the application. Moreover, the regularization concerns only the agricultural and domestic work sectors. So many associations consider the procedure to be absolutely unfair and discriminatory, and expect that it may affect a small number of migrants.